



POLICE DEPARTMENT

May 21, 2010

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Justin Simms
Tax Registry 937542
33 Precinct
Disciplinary Case No. 83633/08

The above-named member of the Department appeared before me on April 21, 2010, charged with the following:

1. Said Police Officer Justin Simms, assigned to the 33 Precinct, on or about and between August 6, 2007 through August 7, 2007, in [REDACTED] County, was wrongfully and without just cause absent from said residence without permission of said Officer's District Surgeon and/or the Medical Division Sick Desk Supervisor.

P.G. 205-01, Page 2, Paragraph 4 – REPORTING SICK/
PERSONNEL MATTERS

2. Said Police Officer Justin Simms, assigned as indicated in Specification #1, on or about and between August 6, 2007 through August 7, 2007, in [REDACTED] County, was wrongfully and without just cause absent from the confines of New York City or residence counties without permission of said District Surgeon and/or the Medical Division Sick Desk Supervisor.

P.G. 205-01, Page 6, Additional Data – REPORTING SICK/
PERSONNEL MATTERS

3. Said Police Officer Justin Simms, assigned as indicated in Specification #1, on or about and between August 6, 2007 through August 7, 2007, in [REDACTED] County, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit, said Officer did fail and neglect to return telephone calls to the Medical Division.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT
PROHIBITED CONDUCT/
GENERAL REGULATIONS

COURTESY • PROFESSIONALISM • RESPECT

4. Said Police Officer Justin Simms, assigned as indicated in Specification #1, on or about and between August 6, 2007 through August 7, 2007, in [REDACTED] County, having changed said Officer's residence, did fail and neglect to notify his Commanding Officer by submitting form Change of Name, Residence or Social Condition (PD 451-021), as required.

P.G. 203-18, Page 1, Paragraph 3 – RESIDENCE REQUIREMENTS/
GENERAL REGULATIONS

The Department was represented by Beth Douglas, Esq., Department Advocate's Office, and the Respondent was represented by John Tynan, Esq.

The Respondent, through his counsel, entered a plea of Guilty to the subject charges. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

The Respondent testified on his own behalf.

The Respondent was appointed to the Department in January 2005. After the Police Academy, he worked in the 32 Precinct for approximately seven months. He was then assigned to his current command, the 33 Precinct.

The Respondent said that in July 2007, he submitted a Leave of Absence Report requesting off on August 6 and 7, 2007. On August 5, 2007, the Leave of Absence Report was returned to him with a notation on it that read, "Denied due to a lack of

manpower.” He tried to speak to someone in Roll Call, but it was Sunday and no one was there.

The Respondent called in sick on August 6 and 7, 2007. He had just moved to [REDACTED], but when he contacted the Sick Desk, he gave his old address as his sick location. He said he submitted a form regarding his change of address to the desk officer, who told him to place it on a PAA¹'s desk, who he believed had a death in the family.

The Respondent admitted that on August 6 and 7, 2007, he was not in his residence in [REDACTED], but he was actually in Vermont. He said he was aware that while on sick leave, he was supposed to remain in his residence which is listed with the Department, and that he was required to stay within the five boroughs of New York City or one of the residence counties.

The Respondent said he first learned that the Department was trying to contact him to find out his whereabouts and what his status was either on August 7, or August 8, 2007. He said he did not have cell phone service in Vermont “except at the very tip of a certain spot.” He said when he reached that location, he called his mother, who informed him that someone was trying to reach him, but she did not say who he should call back.

The Respondent testified that on August 9, 2007, on his way home, he was able to get consistent cell phone service and had 16 or 18 voicemail messages “[f]rom practically everybody.” He said all the messages were in reference to contacting somebody at the Sick Desk. He said other than leaving the Change of Social Status form on the PAA's desk, he did not take any further action to make sure that the information regarding his change of address was delivered to the appropriate units within the Department.

¹ Police Administrative Aide

The Respondent said that Lieutenant Ikone was the "Operations Officer" in the 33 Precinct at the time. While he did "[n]ot really" have any issues with Ikone, he said his partner, Rojas, had issues with Ikone. The Respondent stated that he was "guilty by association" and was "targeted" by Ikone because of it.

The Respondent said on his last evaluation, in 2009, he received a "4.0" out of a scale from 1 to 5 and he has never received charges and specifications. The Respondent stated that he has always been full-duty, has never been designated chronic sick, and has never been placed on monitoring.

On cross-examination, the Respondent admitted he traveled to Smugglers Notch Resort on August 5, 2007 and that he was scheduled to work on both August 6 and August 7, 2007. The Respondent stated that his Leave of Absence Report was denied.

The Respondent was shown a signed notification for Traffic Violations Bureau dated August 7, 2007, (Department's Exhibit 1). He agreed that the signature appeared to be his and that the notification looked like one he would have received before he went on vacation. He did not recall receiving the notification. The Respondent contested that he "ignored" the notification because he wanted to go on vacation with his girlfriend and her parents. He reiterated that he did not remember ever receiving the notification, but he admitted that he signed it, so he "obviously got it."

The Respondent admitted that on August 6, 2007, he was already living in [REDACTED], while the Department had a [REDACTED] address on file as his residence up until that time. He agreed that he lived at the [REDACTED] address until August 4, 2007. He agreed that he left the Change of Address form on the PAA's desk even though the PAA

was not at work due to a death in the family. He said the desk officer instructed him to do so.

On questioning from the Court, the Respondent said he completed the move from [REDACTED] to [REDACTED] on August 4, 2007, and that was when he actually started to stay in his [REDACTED] residence.

On continued cross-examination, the Respondent agreed that he understood the importance for the Department to know his whereabouts at all times, and the importance to give accurate and complete information to the Department. He admitted that on August 6 and 7, 2007, he was in Vermont, and not sick with "pink eye." He also agreed that some of the voicemail messages he received when he was able to get cell phone reception on August 9, 2007 were from Sergeant Edwards of the Absence Control Unit. He did not return any phone calls to Edwards, and said it was true that during his official Department interview, he stated that he thought the issue had been resolved.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined, see *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on January 10, 2005. Information from his personnel folder that was considered in making this penalty recommended is contained in the attached confidential memorandum.

The Respondent has pleaded guilty to the four specifications in this case. The sole issue is penalty. The Department has recommended a penalty of 30 days. The Respondent has urged that a penalty of no more than 10 days be imposed.

The first three specifications deal with the fact that the Respondent, who having been denied leave for August 6 and August 7, 2007, simply called in sick, claiming he had pink eye, and went on a trip to Vermont for that period of time. The fact that he had been told he probably would be granted the leave when he submitted the request and only learned of the denial of leave on August 5 is unfortunate, but not a mitigating circumstance.

Similarly the fact that he could not receive phone calls in Vermont and therefore did not learn that the Medical Division was looking for him is not a mitigating factor in his failure to return those calls, as alleged in Specification No. 3, because he was not supposed to be in Vermont while on sick leave (see Specification No. 2). In any event he agreed on cross-examination that he never returned the calls even after he learned of them.

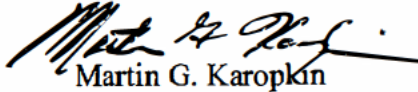
Specification No. 4 might be minor in and of itself. The Respondent had been in the process of moving for several days and completed the task, he said, on August 4, 2007. The PAA on whose desk he left the form was out due to a death in the family. The delay getting the Respondent's current address into the system immediately would not ordinarily be a big deal. Unfortunately in this case the Respondent called in sick the next day and knew or should have known the Medical Division would expect him to stay at the address listed in the official Department records. Under those circumstances the failure to get his proper current address filed in the records became more important, although in the end that enhanced importance was somewhat dampened by the fact that he absented himself from both current and former addresses and went instead on a vacation in Vermont.

In any event, this Court can see no mitigating circumstances in this case. The sick leave policy for uniformed members of the service is very generous, allowing unlimited sick leave in recognition of the hazards of police work. Calling in sick to go on vacation is an extraordinary abuse of that privilege and the trust that goes with it.

This Court can see no reason not to impose the penalty recommended by the Department Advocate which is more than justified by the past cases she cited.²

This Court recommends a penalty of the loss of 30 vacation days.

Respectfully Submitted,


Martin G. Karopkin
Deputy Commissioner - Trials

APPROVED
JUL 20 2010

RAYMOND W. KELLY
POLICE COMMISSIONER

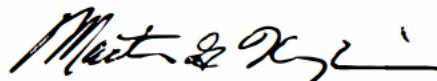
² Disciplinary Cases 83162/07, 81714/06 and 80773/05.

POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JUSTIN SIMMS
TAX REGISTRY NO. 937542
DISCIPLINARY CASE NO. 83633/08

In 2009, the Respondent received a rating of 4.0 “Highly Competent” on his annual performance evaluation. In 2008 and 2007, the Respondent received an overall rating of 3.5 “Highly Competent/Competent” on his annual performance evaluations. He has not received any Department medals. [REDACTED]
[REDACTED]. He has no prior formal disciplinary record.

For your consideration.



Martin G. Karopkin
Deputy Commissioner – Trials